

# **U.S. SMALL BUSINESS ADMINISTRATION**

Little Rock, AR

November 10, 2005



## PROCEEDINGS

[START TAPE Z0000000]

**MALE VOICE 1:** 2,000 distributors to speak about the problem [unintelligible]. Well, we don't have a large [unintelligible] group. We're going to be real close on time, but we'd like to be reasonably concise either in the five to ten minute range, and we may have questions as we go along, and we'll feel free to interrupt if we do, so Mr. Hamilton?

[END TAPE Z0000000]

[START TAPE Z0000001]

**MS. MARTHA McCASKILL:** I'm just going to try to move this up. Maybe you could hear better. I don't have a specific case that I'm going to refer to as the previous testimony, but more that I actually wear two hats; one, as President of the Little Rock Realtors Association, and a 25-year business honor in the residential real estate business, but also on behalf of WIPP, which is Women Impacting Public Policy, and as a founding member of that organization, there are a couple of issues that have very dramatically affected small businesses, and those are the two I want to mention today.

From the real estate standpoint, we have struggled over many years trying to get a clarification of the independent contractor status. This affects probably 90% of small businesses, and puts them into a very, very vulnerable position. The IRS definitions are vague, to say the least, and as businesses utilize an independent contractor, they put themselves into an enormous jeopardy financially. The IRS is not consistent in its interpretation of those regulations, and will frequently come back and fine a company up to seven years, and then you've got the add-on penalties and so forth. It is something that the real estate industry desperately needs, because so many of our workers are independent contractors, and that's what we utilize, that we are asking that the IRS give us some clear definitions on this.

The second item is also, affects both from the standpoint as I represent WIPP, but also the real estate industry. A regulation that was actually overturned, but seems to be out there looming to be reasserted from the Labor Department, and that was the OSHA reg on Ergonomics and Repetitive Motion. The fact that it was actually signed, passed and then, in the very early days of President Bush's administration, he was able to get that overturned, but there seems to be this sort of a presence that they're looking for an opportunity to reinstate that. At that, absolutely from pizza franchises down to a Mary Kay rep, and anything in between could literally have devastated small business, and it is a very passionate issue for us that that be completely set aside, that the reg was ludicrous, unfair, and did not have the type of constraints that

were necessary to protect small businesses, particularly one, two, three employee businesses, so those two particular issues. I know that health insurance is going to be addressed later, and I do want to say, though, that that is something, again, that for small businesses in this country, we are sitting on a precipice and until we can get affordable healthcare available and take advantage of some of the legislation and opportunities that are being proposed to Congress, we will continue to be just on the brink of bankruptcy constantly. That's all my comments.

**MALE VOICE 1:** Martha, thank you. We'll soon get your comments to friends in Kenosha [phonetic] about this and [inaudible] concerns of that [inaudible] hear it from the [inaudible] people and we appreciate [inaudible].

**MS. MARTHA McCASKILL:** Thank you. Pardon?

**FEMALE VOICE:** [Inaudible].

**MS. MARTHA McCASKILL:** I can't hear. I'm sorry.

**FEMALE VOICE:** I'm sorry. Do you have anything in writing, any part of that in writing that you can give to [unintelligible]?

**MS. MARTHA McCASKILL:** I'll be happy to forward my notes.

**FEMALE VOICE:** Thank you.

**MS. MARTHA McCASKILL:** You're welcome.

**MALE VOICE 1:** We can be sure and get the process started with one of our [unintelligible].

**MS. MARTHA McCASKILL:** Thank you. I appreciate your time.

**MALE VOICE 2:** They have a [unintelligible] problem sometimes are a little more widespread than you think. We run into some of these in our [unintelligible] operation. Happened with the Department of Labor, because you have your [unintelligible] you're exempt from any of the things like some provisions awaiting our [unintelligible] farming, but if you grow Christmas trees, that doesn't hurt [unintelligible] plans. It doesn't apply, so you can have two operations and then one definition's applied for work, and then another's for another farm.

**MS. MARTHA McCASKILL:** Absolutely.

**MALE VOICE 2:** It would be very interesting.

**MS. MARTHA McCASKILL:** It is, and it saves—to ask a small business owner who just wants to comply and be a productive member of the economic structure, but he's very much like the previous gentleman, seems be relied up on whims of an individual person, and their interpretation.

**MALE VOICE 3:** I'm [unintelligible] earlier from Dallas [unintelligible] and I will tell you we had no plans to prepare [inaudible], and there's nothing [unintelligible] in the plans to do that. I mean, it was probably all abandoned in the last administration, on the Bush Administration. There's no empathy on the secretary as the poor farming folks who work with education and taught people about it, because it can't be a cost for the injury for small businesses, but it's technical assistance. We had no—nobody's thinking about ergonomics [inaudible].

**FEMALE VOICE 1:** Awesome news. Thank you.

**MALE VOICE 1:** One of the valuable benefits of these hearings will be with the meeting [unintelligible] secretary.

**MALE VOICE 2:** Well, part of being able to communicate that comment direct from the horse's mouth to her fellow colleagues that [unintelligible] policies, it's a good comment. Thank you very much.

**MR. C.A. KUYKENDALL:** C.A. Kuykendall with Village Pharmacy. I wondered if it would be okay if Mr. David King preceded me, his testimony?

**MALE VOICE 1:** That'd be fine.

**MR. C.A. KUYKENDALL:** Just immediately preceding.

**MR. DAVID KING:** Good morning. I thank you for allowing us the privilege to visit with you a few minutes and for the possibility of what we may accomplish. I have Tanglewood Drug Store; I'm a minority, and I'm a small business owners. Well, I don't know if it owns me or I own it, but depends on what day you ask me, but I know that Congress is wanting to pass some cuts, like \$10 billion cuts in their Medicare budget, and there's proposing some changes that—they're defining the basis of cost from what they call an AMP and an AWP basis, and I'm going to clarify for that for you, and I don't know if you got a little drawing that looks like this. Did you get one of these?

**MALE VOICE 1:** No.

**MR. DAVID KING:** Okay. Mindy, could you pass them one, maybe? This is—it will be critical in your understanding of what we're trying to do, so... All right. Pharmacy is, when you look at the Medicaid budget, we are only 2% of the cost of the whole budget, but we're taking a 60% cut, and this doesn't seem quite fair, so it's going to affect the viability of most and, if not all, independent pharmacy owners. Now they're proposing that instead of using the average wholesale cost—now what this cost is, is that several years ago, when you went from one part of the country to another, there was no standard price that you knew that you were going to have to pay for this medication, so they came up with a book that published these prices that you should be able to pay around that price anywhere in the United

States. So that's how average wholesale price came into being. There is an average manufacturer's price that the drug companies came up with that they will actually sell that drug for to a wholesaler. Now, this AMP that they're wanting to switch to is the lowest possible cost that that product can be sold for. Now they can't distribute—they are only one manufacturer. They can only make what they make. If we're sitting out there in a drug store, you know, we cannot buy all of the products we need without buying from maybe 30 manufacturers, maybe more, if you have gifts, and health and beauty aids, and everything that you have in a drug store, so we have to have wholesalers, and most of the drug companies have very high minimums, like a \$500 order, \$1,000 order, \$750 order, so that pretty well take if you need—if you just \$100 item, you cannot buy that direct from the manufacturer like our wholesalers do. But that's why we have the wholesale picture in here, and you take that average manufacturer price and the 'X' on that page is the mark up, which varies from wholesaler to wholesaler across the country. There's only about six. We couldn't put a figure in there, because we have no idea what each mark up is in different parts of the country, but they have to distribute that to regions. For instance, ours is in Memphis, and they cover Tennessee, Arkansas, Mississippi, Missouri, Kentucky, and probably parts of Alabama and Georgia, so there is an expense of about 4% that they mark up in this process to get that to us retailers. So when we get down to this average wholesale cost that Congress proposes, plus a 6—I mean, the average manufacturer's price plus 6%, that's going to—on brand name products, that's going to be \$10 below—we have calculated it; it's going to be \$10 below what a retail pharmacy can even purchase it for. I just never saw the day that I felt that our government would enter into something that would take your profession right out of the marketplace, but this will do that, and we're trying as much as possible to let our Congressmen know that this is not the way to go, and I think that they're just going in the wrong direction. One of the things, there's this second sheet—on mine, it's colored, and it has the cost of the prescriptions. It's a little diagram, and 75% of the cost of a drug is—that's what the manufacturers—that's what they set [phonetic]. Three percent is what the wholesaler marks it up, and our percent of—this is our gross profit percent, is 21%. Now you net these figures down, and by the way, these are from the U.S. Census Bureau, these figures, from 2001, so they're legitimate figures, but the pharmaceutical manufacturers are sitting there with a 12% net profit. The retail pharmacists are operating at a 2% net profit, and the wholesalers are looking at a 1% of all this, so, you know, they're going in the wrong direction. Why, if you're going to attack someone at this end that only has a 2% net margin, and you're going to take a real hit on that, I mean, does it not make sense to go to the other direction where the net profits are much higher and they can absorb that? There's just no way that we can do that. The PBMs and third party companies are just annihilating

our business as we speak, and so we have got to get the message to Congress. This is not the direction that we need to go. We are—there are some facts that enter into this also, that we are already under many federal agencies that, you know, the DEA. There's so many forms that we have to do that. We're under the Arkansas State Health Department of Regulations; we're under the Board of Pharmacy Regulations, OSHA. I mean, there are so many regulations that require so many hours of paperwork, but in the process of filling a Medicaid prescription is federally mandated by law that we have to counsel this person, and that to make them totally understand what the optimum time is that they take the medication, that they don't take it with maybe certain foods or other medications, that it may have some sensitivities; there's all kinds of interactions that are in our computers that we have to watch for, and make sure they understand each person with each prescription, so that takes time, and the people we deal with sometimes are fully understanding and they're confused, and I think we play a vital role in answering questions that physicians are too busy to answer. As an independent businessman, I'm on call 24 hours day, 7 days a week, and I guess I like to think that we impact those people when they come in with a cold or something, and we determine if it's something minor that maybe we can help them with that we keep them out of the hospital and out of the doctors' offices, which saves money, we teach them about their diabetes so that they don't have infections and end up in the hospital. The counseling we give, I think, is invaluable, and I guess I'm looking at this and thinking that they're reducing—we don't have free delivery, but we do have delivery to those shut-ins all over Little Rock that, if they can't get out, we can send it to their house, and then we have to get that signature authorized and we do that, and we work that out. But I guess that I just don't like the fact that they're saying to us, "Your service is invaluable, so we're just going to cut what we pay you, and you're going to lose money and like it," but already, if someone comes in and fills a prescription at our drug stores anywhere in Arkansas, and they don't have a \$3 co-pay or a 50 cent co-pay, whatever it turns out to be, we legally can't make them pay it. We lose it. So we're already mandated by Medicaid to take some loss, and you know, who is to say that when that person comes in, I mean, if you knew that, would you automatically just own up to having money to pay it? No, you wouldn't. I mean, so we're faced with a situation that's bad to begin with. But anyway, I just—there are 25,000 independently-owned pharmacies, and each one of us employ over 10 people per pharmacy, and we represent about \$84 billion into the marketplace, and Medicaid is probably about 27% of our business and I would say it would be much higher than that in rural areas, particularly in eastern Arkansas and some of the other parts, but I would just prevail upon you if, by any means possible to have them rethink their thinking on this. Congress just passed a resolution that they could not negotiate prices with manufacturers. You know, how in the world this happened, we

don't know. We don't have their kind of lobbying power that the manufacturers do, but I think that we can help the healthcare system and help the government to redirect some of those people and cut their expenses, and be a vital—a very vital—part in the healthcare profession to reduce cost for the government if we were given the opportunity to work with them, and we would welcome that, and I thank you for your time.

**MALE VOICE 1:** Let me a few things. Will you provide us with your notes on your substantiation on your comment form? I think it would be real helpful for us as we process, for us to be real specific as [unintelligible] and the FDA interaction that you're about with the proposed legislation. The other thing I think would be real helpful is to have a graph of the percentage of your store operations that would be impacted by these drugs. I mean, in many cases, this could be [unintelligible], but I know you got 10 or 15% of typical pharmacies revenue may be from non-drug sales, but the distinction here is clearly the [unintelligible] to be raised is the fact that [unintelligible] percentage of your reason for [unintelligible] your business, your existing business, for regulations is it's going to impact your material costs. The final thing, we can, once we get your comments and share some other related discussions that we have across the country, hear from some other pharmacists, we might have a chance to [unintelligible], but I know for sure this would be passed along for the office of [unintelligible]. I'll also encourage you to do this as well. I don't know if we made a distinction in our presentation this morning, but there's a line between changing legislation or it gets passed [unintelligible] small business and [unintelligible] is what you were talking about, and once the legislation's been passed, the laws are on the books, [inaudible], and advocacy was created in the 70s. We figured out pretty early we need to get [unintelligible] on looking at legislation before it gets passed. It wasn't until less than ten years ago that the farmers said, "You know, what about the loss of [unintelligible] passing over something [unintelligible]," so we could certainly feel and we'll just encourage you to strike up a second dialogue, refer to [unintelligible] and hear from us in more directly with Washington about this legislation before it gets passed so we can actually comment into working [unintelligible] representatives to do that. That certainly is [unintelligible].

**MR. DAVID KING:** I appreciate, and we are pursuing those avenues. Thank you.

**MR. C.A. KUYKENDALL:** Hello.

**MALE VOICE 1:** Thank you for being here.

**MR. C.A. KUYKENDALL:** Thank you very much. My name is C.A. Kuykendall. I'm a pharmacist from Ozark, Arkansas. This, too, is about some proposed legislation, so if it's not appropriate for this

meeting, I have some brief comments to make, so if it's—I don't want to be at the wrong meeting. As I said, I'm from Ozark, Arkansas. I'm a pharmacist; I did my pre-pharmacy at Harding College at the time, now Harding University, and graduated from the pharmacy school here in Little Rock at UAMS, and along with my wife, we own Village Pharmacy in Ozark since 1971. And as Mr. King was pointing out that the proposed changes in the Medicaid reimbursement puts the entire, as I said, it puts the entire burden of the cuts squarely on the back of the pharmacies. What I wanted to testify about this morning was an example of what the State of Arkansas has done with their evidence base of prescription drug program in the state Medicaid program, and I happen to serve on that committee. I'm on the Drug Review Committee; that's a committee of three pharmacists and three physicians that meet to review drugs in different classes, and the Drug Review Committee reviews without regard to cost, and it reviews things such as equivalent effectiveness, if there's different adverse reactions for one drug versus another with a purpose of coming up with all drugs in the same class being equally effective according to researched medical literature, then that information is passed then to the Drug Cost Committee who receives this [phonetic] from the drug manufacturers within that class, and then they will choose formula based on cost efforts going through the Drug Review Committee. That program has been in existence in Arkansas now six months, and in six months, it has saved the state Medicaid program \$6.8 million, and I would just like to comment that a program such as that on a national basis would far more than offset the cuts, and it would not place the cuts on small businesses, which, I think is an unfair practice.

**MALE VOICE 1:** Well, you know, how to and betterment are good comments to receive and that's the [unintelligible] office likewise can tell you that. [Unintelligible]? [Unintelligible] consider because that's an equally valid comment, too. I would mention to you and everyone else in here [unintelligible] earlier this year, the State of Arkansas passed [unintelligible] level, some regulatory clearance—[unintelligible] legislation. It really wasn't legislation; it was an [unintelligible] order, but you're fortunate in here, in Arkansas, and that [unintelligible] regulatory [unintelligible] cost is upsetting that with the regulatory issues you have. Oklahoma passed legislation; we have Texas [unintelligible] state regulatory [unintelligible] to the comments [unintelligible] legislation to improve Medicaid [unintelligible] the course of [inaudible] agents, federal agency.

**MR. C.A. KUYKENDALL:** Thank you. Thanks for the opportunity to speak.

**MALE VOICE 1:** Thank you. Mr. Randy Hamlin?

**MR. RANDY HAMLIN:** Yes. After hearing all this gloom and doom, I guess I'm—[unintelligible] find me the right forum, but I sort



of got a two-prong situation here. One as a personal relationship with the agencies, and another as a consulting firm with my clients, and yes, I put down USDA, but also the Defense Department. Some other agencies fall under this same category. One of the things that we experience as small business people is the inconsistency of regulations in the procurement being when you post solicitations and all the solicitations are posted, you will get a lot of acronyms, a lot of requirements that are not unique to one operation of the small business guy, just does not really understand. He keeps going back and forth from one set of rules to another set of rules, and it creates a problem of understanding. One specific deal was, recently I had a personal relationship with the USDA where I made a solicitation for a bid, and when I made the solicitation, looking at it, it was only seven days from the date of posting to the closing date, which really creates a burden on a guy, and me being a former 37-year postal employee, okay, you know, I kind of knew a little bit about the regulations, but gee, you know? It kind of puts me out of the ballgame when I've got to get letters of references, I've got to get two solicitations—a solicitation of technical and proposal, and put all these together in seven days. And when you turn the bid, then you try to go around two or three people, trying to find the subject matter experts in order to find out what exactly is the bid all about, and you get passed around three or four people, and nobody seems to know exactly what the whole solicitation was about, so you wind up with a period of frustration. And then at the end, there was a review board, and this is still with USDA, there's a review board that has a rule on the who's eligible for the procurement and the criteria and the requirements, so, well, when you got in your solicitation that you have 22 years worth of experience in what they're looking for, and you get back a note on the solicitation, so you wonder if you bid too or if you didn't say the right things, or was this just a, sort of a bid that was put out by somebody already was pre-selected for, so you wind up with a lot of what if's and if this is really, if there's really a fair shot in giving a person an opportunity to bid for these jobs. Moving onto the Defense Department, which is, I have some clients who I have represented in the Defense Department, and here's a client who that has a specific bid and got the solicitation, but in the middle of the solicitation period, they contracted out to payroll side, so he goes from just submitting an invoice to what they call a 'wide area workflow,' and you got a person that's 60 years old that's never seen a computer, and they're wondering, "Well, what must I do?" So you spend the wills [phonetic] and they get behind about, oh, I think this person was probably about, when you talk about a net's 30 days, took 90 days in order for him to get paid. A guy can't survive in business like that, and especially if he's got five, six people working for him. The other part of that is that the next solicitation that came to him from the Defense Department, and are the only ones who seem to contract a lot, subcontract out their technology and cell phone. Well, here is a

person who lives at an address where the DSL and high speed Internet service did not get to the area where they are, and you got a solicitation package that's so voluminous until you can't even download it in order to qualify for the bid, and all those things just kind of put a hardship on the poor guy, or the small business guy who's trying to at least get some government contracting, and you say that it's open for all, but you know, it kind of makes you wonder, well, who is 'all'? And that's kind of my...

**MALE VOICE 1:** You know, my colleagues here may have some comments. I just have two. One, if you've written up your comment on, or as you write it up, part of this process—regulations are [unintelligible]. Congress wants to make sure that small businesses thrive and prosper in this economy. You know, writing the comment about a rule and how difficult it is to apply, given an [unintelligible] more time, is certainly a valid comment to talk about, whether it's with UMCA [phonetic], or the Department of Defense, but that's certainly a valid issue. I think, on the other issue, about some of the clients [unintelligible] that are regular card members [unintelligible]. You know, we have received comments. I know most recently, the Environmental Protection [unintelligible] home businesses. It's very difficult for me to understand [unintelligible] help clarify for me, and agencies will rewrite on occasion. They, again, appreciate your comments. The intent is to have the small business comply so that it's a [unintelligible] situation [unintelligible], but gentlemen like you, Mr. King, and some people—here's an issue I have and I need to clarify it for me. This is really what I would see as a second comment you provide for us so that, again, we can [unintelligible] comment, visit with [unintelligible] specifically [unintelligible] rules were similar. I would encourage you to pursue both [unintelligible] with the help of clarification and find those rules, given what time [unintelligible].

**FEMALE VOICE 1:** All those connections with the [unintelligible], the [unintelligible] connection with [unintelligible] we want to do that as well. It would be very helpful to you [unintelligible], so the next time where there's a state [unintelligible]. I don't know the Department of Defense; I've never worked with [unintelligible] their bids, but if they list out for you, for instance, calling 10 factors with [unintelligible].

**FEMALE VOICE 2:** [Unintelligible] for the record, we have the name here—

**MR. RANDY HAMLIN:** Ranmar Consulting. Ranmar Consulting. R-A-N-M-A-R. Sure.

**MALE VOICE 1:** And again, if you will give us a [unintelligible], your notes, and that's really our substantiation to have some tangible [unintelligible] to take to Washington.

**FEMALE VOICE 1:** I do have a problem [unintelligible] the time, the situation you brought up, sir. And one of the things, [unintelligible] a small business, I think that [unintelligible]. I know it applies to a small business for the federal government, and I've been with the federal government for [unintelligible] years, so I [unintelligible] the federal government payment usually promotes the [unintelligible] of contracts as you pay for them; 30 days for a small business. You can reduce that period of time, and we've done it in 14 days, and I believe, and I'm not [unintelligible] I think we [unintelligible] in seven days. You get actually paid every week. Now the fact is you're a [unintelligible]. You usually match your [unintelligible], so if you're sending in a payment invoice monthly, every 30 days, you're going to get paid every 30 days. If you want a 14-day pay [unintelligible], you're not going to [unintelligible] and you are, in fact, where your primary invoice may pay you wrong, and I assume that you want to get paid every week. That would be initially [unintelligible], so I think we can do that. I know we can do it for 14 days, but we don't have to make the payment every Thursday. It would be conditional on the 14<sup>th</sup> day, when we can [unintelligible] less time to process within a 24-hour time period, so it's possible that agency would pay in [unintelligible] if you want to make sure the time period of the payment. And the other thing about solicitation time, usually our solicitations are 30-day, so if you had a 7-day solicitation, I would think that is a unique situation where there's a contact of urgency. Check with your agency. If there's a problem that you can't do that, you just [unintelligible] contact an officer, and we have changed [unintelligible] the small business community that come in and they want to do this, but [unintelligible] in the rural world. We're going to have to team up or merge to meet your qualifications, or we have to [unintelligible] and you flip the schedule in order to make sure that we gave a [unintelligible] business an opportunity to put into our solicitation, so if there's a [unintelligible] contact, there should be on the [unintelligible] that you see. Do that, and [unintelligible] contact. And the last thing, if you do your [unintelligible] that you were not selected for a particular solicitation of [unintelligible] and be [unintelligible] from the agency. You can request it in writing, they can give you a telephone call, they can give you an [unintelligible], and if I were you, I would make it a point to go in and speak with [unintelligible] maybe [unintelligible] contract [unintelligible] contract officer or the person who holds the chair—the chairperson who knows that that [unintelligible] committee. There are [unintelligible] justification from one special [unintelligible] selection, and they will tell you why, or maybe you got it and they'll be able to tell you why your firm didn't rank high enough, or—

**MR. RANDY HAMLIN:** [interposing] That's all I need.

**FEMALE VOICE 1:** — or why you were omitted, or, you

know, just allow so that [inaudible] selection, but a [unintelligible] request will be honored by the federal government, so I just [unintelligible] you do not.

**MR. RANDY HAMLIN:** Thank you.

**FEMALE VOICE 1:** You're welcome.

**MALE VOICE 1:** Yes, sir?

**MR. MARVIN L. HORNE:** My name is Marvin, along with [unintelligible] Air Force. Just to kind of take me back off the [unintelligible] here. The debrief [phonetic]—you asked me you must do it within three days, there's a time limit on it, and as [unintelligible] that we know, you just lost the chance. And the debrief [phonetic] is actually pretty obvious to what you see are your weak spots. That way [unintelligible] your next solicitation, you can better yourself for that opportunity. Also, a lighter workflow; that's part of the new [unintelligible]. That's basically to help you guys to pay faster. If you have problems with it, you need to contact your agency, and we actually kind of walk clients through it that come in our office, and they set them up with [unintelligible], walk them through the process, because the first time, it's very difficult.

**MALE VOICE 1:** Yes, extremely.

**MR. MARVIN L. HORNE:** So [unintelligible] the process, just kind of contact your agency and you can deal with those [unintelligible]. Once again, [unintelligible] it's easy—

**MALE VOICE 1:** [interposing] It is, once you—

**MR. MARVIN L. HORNE:** [interposing] Yeah, once [unintelligible] the small business, whatever, needs to step [unintelligible] and contact the agency and we will help you, whoever, set up the process.

**MALE VOICE 1:** See, the problem was, when you contact [unintelligible] it [unintelligible] for about 60 days and the contact was not able to figure out what the [unintelligible] and so forth, and I understand that, you know, a contact just come in and they'd sell you the idea, but you had dates and don't know if the idea is going to work with exactly what you put, and that's where the problem [unintelligible].

**MALE VOICE 2:** [Unintelligible].

**MALE VOICE 1:** Sure.

**MALE VOICE 3:** Okay. Next we have Mr. Jerry Riley.

**MALE VOICE 1:** Mr. Riley has given that talk about the Small Business Administration, correct?

**MR. JERRY RILEY:** I'm sort of scared to, since what

[inaudible].

**MALE VOICE 1:** I wanted to mention [unintelligible] it's very possible that the [unintelligible] office in [unintelligible], actually, independent entity, independent of the Small Business Administration. The office used to, actually, be in Chicago in its first form, was there for a number of years, and has moved to Washington, and [inaudible] and the population [unintelligible] comes out as small businesses [inaudible] but the actual report to Congress, and evidently [inaudible] affiliate with the SBA different district offices to facilitation discussions with small business, but we think some people are often reluctant to comment on some of the problems they have with a small business. As a customer [unintelligible] administration [unintelligible] same thing, talking to Little Brother about Big Brother or something. I want to assure you, that isn't the case here.

**MR. JERRY RILEY:** Oh, the problem was, is that my complaint was partially with the [unintelligible], that organization within the SBA, and let me tell you briefly the problem I had. I mean, I almost just gave up on it. But my company, Riley and Associates, is that debris removal contractor got experience back in the storm—ice storm of 2000. It happened here in Arkansas, and since then, it worked about three or four [unintelligible], three or four of these disasters. One of the major contractors that I was working with wanted to see if I could get 88 [phonetic] certified in order to facilitate bringing in more minorities into the debris removal in these disaster situations, because a lot of times, there's the—like, down in New Orleans and the Gulf Coast right now, you got a lot of minorities that think they're being discriminated against because of these contracts, all laid out and that kind of thing, but in emergency situations, and because I've been in there, I've seen it really don't have anything to do with race if you can perform the job, but it's an emergency situation, so you got to move fast. I mean, people, you can't sit people around, talking about—I don't care if a green man come to put my lights. I want to get my lights on; I want to get myself back in order. So that is never—I've been in that, and I'll tell you, if I put this cell phone on now, I'll have at least two contractors calling me before 12 o'clock about contracts. But my thing was, back in 2002, I went to get certified as an 88 [phonetic] contractor because of the industry, and I knew most of the people in the industry that was doing the disaster recovery, and consequently, I had the worst time in the world. Now, I mean, I know I'm not the brightest person in the world, but I always get somebody who's a little smarter than me to do things, so I started that certification process, and thought I'd done a pretty good job of sending in what they needed, got a response back that everything looked good and it's on the way to Washington. The next thing I found out is on the way to Houston—or Dallas—then it was on the way to San Francisco, and then I was asked to resubmit everything because my information was outdated. That

irritated me a little, but I said no big deal, and I went on and done that. Then it went to Washington, D.C. from there, and somehow or another, you all closed your regional office somewhere, and that's why it was shifted somewhere else. My thing is that I had to deal with about three or four different people. I mean, it was a nightmare and I spent more time and money and effort just trying to get something I thought was simple done, and as President of the Jefferson County Memorial Business Owners Association here in Arkansas, I've worked with the local SBA and, on numerous projects to help not only identify minorities, but to get things to them that they wanted. I actually, I mean, Joe Fogerty [phonetic] is one of the greatest guys I ever met that worked for this SBA, and me and Joe and the rest of the people there had a very good relationship, where we actually done a lot of good things down in the southeast part of Arkansas, and including we're getting a business [unintelligible] built down there for the minorities because of Joe and some of his staff, and myself and others. And I understand the process, because I was sort of like the one that helped everybody else out to get through this minefield with government regulations, and I always had a pretty easy time of doing it, because I guess I could call Joe or somebody and they sort of get it done, but boy, when I tried to get this 88 [phonetic] certification done, man, there's no way in the world they're going to tell me I'm this crazy and this thing is this difficult. And I'm about to realize that may you are so crazy that you don't understand this. I hired somebody else to do it, and I'll be dang if we still had problems. And then that came that there was at least twice where we had to start all over again and renew it. By that time—then they actually sent it back to me one time, and when I sent it, it was a booklet like that, but when they brought it back to me, it was a folder that big. It was everything. I mean, so we got it back up there, so I messed around—the worst mistake I did is when I called up to that Osterman's [phonetic] office in Washington, D.C. His name is Mr. Mike Barrera [phonetic].

**MALE VOICE 1:** That's correct; yeah.

**MR. JERRY RILEY:** Yeah, Mike Barrera [phonetic].

**MALE VOICE 1:** He'd been the [unintelligible] in 2002. He did a couple months with that.

**MR. JERRY RILEY:** Oh, okay. Well, [unintelligible] was in 2004 when I think he asked a guy named Bob in the process. And all I wanted to do was try to make some suggestions to the SBA on how to better fix this thing. I mean, I'm not that smart, but it just looks like some simple stuff can be done to make it an easier process, and I think one of the things that I suggested to them—I wanted to suggest to them was, look, can you let one person—one person that I can talk to, as opposed to sending my application to this person, to three—yeah, and I mean, that's all I wanted to do, but I messed around and talked to some

secretary out there, some—in the main office, and—

**MALE VOICE 1:** The [unintelligible]’s office or the SBA?

**MR. JERRY RILEY:** No, the SBA office, because I originally was trying to talk to the director, because I just wanted to make some suggestions, and I didn’t think it was a big deal, but boy, when it all ended up, that secretary, she had—it had got to politics. I mean, it was not whether I was a Republican or a Democrat. And I messed around and said I was Republican and what did I do that for? Whoa. Man, it just went haywire. It got so bad, and this was gotten with the Osterman [phonetic] and I thought I was talking to him in sort of confidence one day, and I was trying to tell him that what I was trying to achieve and that I had subcontractors who also wanted to participate, who were minorities, who, in a couple of the disasters didn’t get treated quite fairly, and that we were going to have a training program along with the primary contractor who was willing to put up money, train these folks so that when these disasters happen, they can come in and ready set to go, because like I said, when a disasters happens, you don’t have time to sit here and go through a minority set aside program and all of that kind of stuff. Man, you got to get people back in service, and so this Mr. Barrera [phonetic], boy, I talked to so many folks in there. I’m going to tell you, they’re going to tell you about me when you call up. If you ask them, they’re going to say, “Yeah, we remember that guy,” because all I wanted them to do was to, I said, “Look, it’s not even about me anymore. It’s about the process, and I know that I’ve worked with so many minorities in this thing, and if I can’t understand it, I know it probably confuses them along with everybody,” so I said, “Could you all just take a few suggestions and make sure that the director gets it?” I ended up in a meeting. I guess—I didn’t know it, but the [unintelligible] a Mr. Barrera [phonetic] had me in a conference call and it really irritated me, because he had, I guess, the director’s secretary and other folks in the room, and I thought I was just talking to him, and it just so happens, I heard someone in the background. I said, “Man, you wouldn’t have me on the speaker phone, would you?” He says, “Yeah.” I said, “Is anybody there?” Yeah, and that’s when everybody commenced to telling me who all was in the room, and boy, I tell you, it just went totally downhill when all I wanted to do was something simple. I mean, I just wanted to make a suggestion that could you all just have one person dealing with that individual and not send it to so many persons, and then I had another suggestion, which—what was it? I don’t have my reading glasses. The whole thing is that there ought to be at least a one-year cutoff for this thing. I mean, you all better get it done in a year, and if you got so many applications that you can’t, let’s just stop accepting applications. I mean, it’s simple. If you can’t process this information in a year’s time because you’ve got a backlog of people who are filing, just say, “Hey, we can’t accept it at this time, because we don’t have the person there to process them in a

timely manner.” Because now here it is, 2005; I got contractors—minority contractors—calling me out the gazoo about contracts. I’m struggling. Now I’m not making any money for this, but I got contractors down that I know personally and I’ll hook them up with people because of logistics. It’s very difficult for them to make money if they’re coming from any place other than New Orleans. I mean, if you don’t have your equipment there, your home there, and you’re living there, you really can’t make any money. You come to Arkansas, you got it just with your hotel room, food, I mean, you got—till you can’t get the right price. And to say—and that’s got nothing to do with the race, seriously, because if you’re an emergency situation and it isn’t a hard job. It’s a very simple process, but it’s just that process that you need to know and in that state, the regulations that you got to [unintelligible], and if these folks aren’t sort of brought up to snuff, the learning curve is short. But in 30 days, I mean, people can’t afford from you to learn how to get something done so they can get their utilities on, or they can get something in their bellies. But my complaint was actually with that office, because I didn’t appreciate the way I was treated, and then I just asked the subcontractors who were asking me, “Look, when are we going to start this program?” I said, “Man, you all call them folks in Washington, D.C.,” because I just about have had enough of it and whenever I catch that SBA director somewhere in this region, I’ll just get with him, because—and I think that’s the last thing I told them, other than I gave his number—Mr. Barrera’s [phonetic] number—to some of the subcontractors who were very disappointed because they thought that this was going to be a go, and that had it been a go, then right now we could’ve had qualified minorities down there in New Orleans working this, and we could’ve gotten a piece of that pie. But it’s a shame that we couldn’t get a piece of the pie because the SBA and then the office that was supposed to sort of work this out, and all—it had gotten to I didn’t care about my business. I said, “Let’s just get the process to where this thing will work a little smoother. Can we put it online or something?” But no one wanted to talk to me up to this day, and I don’t even know where my application is, or what they’ve done with it, but they didn’t throw it—probably threw it in the trash, because they got tired of listening to me talk.

**MALE VOICE 1:** Well, I hope not, but did you—you never go tan answer back on, or a letter or anything about the streamlining that the 88 [phonetic] contractor’s certification process?

**MR. JERRY RILEY:** No. No, sir. They wouldn’t even let me talk to nobody.

**MALE VOICE 1:** Well, we—one thing we can do—we’ve got your comment. We can sort it out [unintelligible]. There’s an associate administrator that oversees the 88 [phonetic] contractors and certification process. We can certainly offer them with your



suggestions about how to streamline the process, one point of contact, you know, why don't you cut it off when you get too many to process, get an answer for you also on other things that [unintelligible] suggestions. I mean, there may not, you know, when you shut one of these programs, the funding problems, there's nothing that gets Congress to fund a program quicker than seeing a lot of [unintelligible] small businesses across America, so you know, all of those comments are good. I'm sorry they didn't help you with [unintelligible]'s office. I promise you—

[Crosstalk]

**MR. JERRY RILEY:** Seriously, it was worst than what you can imagine. It was a nightmare. But the secretaries wouldn't even let my calls go through or anything; wouldn't even take messages. I mean, there's just one secretary that I got into it with her, and boy, she just poisoned me all the way up there.

**MALE VOICE 1:** Right. Yeah. Yes, Ma'am?

**MS. CAROL SILVERSTROM:** I'm Carol Silverstrom, and I'm from the SBA program [unintelligible]. I'd like to mention that the SBA realizes that [unintelligible] application process is not working as well as it should, and we do have an online application that people can fill out, they don't even have to submit a lot of the paperwork, and [unintelligible] have information there, but they are processing that in, you know, it's a [unintelligible]. Some of your concerns [unintelligible]. Also, I might add that we put Carol [phonetic] Jenkins [phonetic] in charge of the government contracts [unintelligible] if you're involved in contracting [unintelligible]. She's also been down in New Orleans and she's working [unintelligible] to try to get small businesses more contracts and so I think you're trying to address some of the problems that you've encountered. [Unintelligible] and we give you credit for making [unintelligible].

**MR. JERRY RILEY:** Well, I sure got a [unintelligible] did enough.

[Laughter]

**FEMALE VOICE 1:** [Inaudible]. I [unintelligible] to offer [unintelligible] programming [unintelligible] themselves [unintelligible] using a lot of the [unintelligible] process, [unintelligible] and they were going to [unintelligible] much more streamlined. I think that it should be the same level of effort applied to whether it's [unintelligible] program, so all [unintelligible] and it should not be a burden for the [unintelligible] whatever they're going to [unintelligible]. But I would think that because of the 88 [phonetic] program [unintelligible].

[Inaudible]

[Crosstalk]

**FEMALE VOICE 1:** You wouldn't have the government, you didn't have the [unintelligible].

**FEMALE VOICE 2:** Lastly, also about the availability of jobs [unintelligible] from 2001 to right now. What if the [unintelligible] for the [unintelligible]. We have [unintelligible] for job in [unintelligible] and also the jobs [unintelligible] main opportunity to small businesses to subcontract and work with [unintelligible]. Are you applying the [unintelligible] to the [unintelligible]?

**MALE VOICE 1:** [unintelligible]?

**FEMALE VOICE 2:** No. Arkansas [unintelligible] Systems Center is funded through a private agreement between the University of Arkansas [unintelligible] extension service [unintelligible], and what they do is they will work with you in terms of finding a contract [unintelligible], and I can help you out, you know, [unintelligible] something, be put in contact with them and where you could go and register [unintelligible]. Also, [unintelligible] is just going to have a [unintelligible] conference February [unintelligible]. [Unintelligible] conference coming up and that's [unintelligible] office that [unintelligible] participating in, including [unintelligible], and there's going to be a focus on contracting and making sure that people within our vicinity are [unintelligible] so they don't get [unintelligible]. I need to talk to you about [unintelligible].

**MR. JERRY RILEY:** Yeah, and I've been to those conferences, ma'am. I truly understand how to—I can hustle a contract, but it's just that the SBA 88 [phonetic] that I had the real problem, but he just told me that that Mr. Barrera [phonetic] isn't even there anymore. He's gone, and hopefully they fired him, because the way that man sees me—

[Laughter]

**MR. JERRY RILEY:** —No, I'm serious. And there's a new guy there, so I think I can talk to somebody new who hasn't been poisoned already. I apologize for you all to come up here and get all [unintelligible] and I had to complain about you all, and I didn't know you all were the ones doing this until a few minutes ago when I looked at that thing, and I said, "Oh, my goodness. I'm right here with the—"

**MALE VOICE 1:** [Inaudible].

**MR. JERRY RILEY:** Okay.

**MALE VOICE 1:** We're running a bit behind [unintelligible]. Jim Davis?

**MR. JIM DAVIS:** Good morning. My name is Jim Davis. I'm a small businessman here in Arkansas. I have a small corporate

insurance agency. I'm on the Leadership Council Board of NFIB here in Arkansas, and I've been active in small business for decades. I am semi-retired. I have a couple of points that I would like to bring to the attention of this committee this morning. Of course, the first and foremost, I realize this is a federal group of people, but Katrina and Rita taught me that my government starts at the local County Sheriff and ends with the President of the United States, so I may cover a wider range of discussion than normal. But first of all, regulation just beats small business to death, as you all know, and it's not a single thing, but it's from every level of our government. So here in Arkansas, last year at the legislature, we were able to get a proclamation. We were working on a law, but the governor in his wisdom felt a proclamation would serve the same purpose as a law to establish a board to review all regulations by Arkansas departments [unintelligible], and this board would be made up of small businessmen or women who would make comment or input on any regulation issued by the department or board, so that no regulation can become law or go into effect until the governor signs it. And we were set up for the purpose of providing information from a wide variety of small businesses as to how this would affect small businesses. So I was unfortunate enough to be asked to set up this board so that 12 small businesses in Arkansas from various types of businesses, and this board, all being small businesses have a limited staff, so we had to devise it in such a way that we did not have a terrible paper flow running back and forth from the governor's office, the economic development project [phonetic] and from regulators so we could do all this electronically, and we had to set some limitations, because since you have 12 people all with diverse interests, we had to set a limit on what time they could respond to these regulations. So the regulations are mailed out or e-mailed out to each of these businesses. In the process of e-mailing them out, they give us a summary of what the department is proposing the regulation, what they believe the impact statement or forward rules and regulations would be, whatever efforts they've gone to in hearings and what have you, then we, in turn, review that and make just comments. We're not a lobby position; we're only information. We provide information to the governor so that he, in turn, can make a decision based upon what he feels is best for the state, but have input from small business as to how it affects us, what it will cost small businesses to operate, if new employees will be required, and things of that nature. We've been operating this since early this year, and so far it's working absolutely excellent. We're not having any problems, and the time limitation we put on each business owner that participates in this is five working days, so regulation goes out, and if he happens to be on vacation or out of the country, or what have you as a businessman owner, and he does not respond, the governor's entitled to say that that person has no objection to this particular regulation, or no input he wants to put on it, but from the dozen people that we have that do these responses, he gets

an adequate response from right [unintelligible] businesses within that time frame so it doesn't hold up the process of any of this regulatory administration. So I would hope that through your hearings throughout the regions which you operate is that maybe they could spread this further, and have this available to small businesses in all the states—United States. I understand there's about eight or nine states already that has this, but I'd be happy to participate in any way this committee would like, furnish anything that I have available so that you all would have information to carry on to other regions. And the second thing, if I can jump speedily to another problems that's near and dear to my heart, and if [unintelligible] members that I'm [unintelligible] is the death taxes. We call it the 'death taxes' simply because when you die, they come and get your money, and almost everybody has, although there's only 1% of the taxes related in the United States to estate taxes, as they call them, it's still is a huge burden upon many, many small businesses. A lot of people, a lot of our regulators or legislators, would like to put some kind of a limit on death taxes. In other words, \$5 million or \$8 million or \$10 million, and my first response to that would be "Do you want to quit hiring people, quit improving our society and our economy when you reach a specific level?" [Unintelligible] would say I'm [unintelligible] if you had stopped at \$5 million or \$10 million, or Tyson [phonetic] or any of the other people who are successful in business. This is an extremely important thing to the small businessman, and many, many, many small businesses will be severely impacted if this is not extended to a permanent law before 10/11, 2010. It'll revert back to where it was when the law was originally passed if it's not extended by 2010, and that is all the testimony I have this morning to offer this committee.

**MALE VOICE 1:** Mr. Davis, I just get [unintelligible] if you'd fill out comment points [unintelligible] and get that back to us, we'd really appreciate it. You know, that tax, especially on [unintelligible] succession and younger generations [unintelligible] that this recommendation which they abolish that state tax would be helpful for me and we'd appreciate them. This [unintelligible] thing I just wanted to offer up to you, as I mentioned earlier, in Oklahoma has the same similar legislations. It's the same Small Business Administrations office [unintelligible] that have all the legislation, [unintelligible]. And one of our former [unintelligible] has a peer position in Oklahoma, been through about five or six years of implementation, [unintelligible] the state regulatory offerings, so I offer to you that contact [inaudible] for a number of years.

**MR. JIM DAVIS:** And I think she's been—we're in our first year.

**MALE VOICE 1:** So it might be helpful to talk to her, [unintelligible].

**MR. JIM DAVIS:** And I want to thank you all for holding this meeting today, and I certainly want to thank President George W. Bush and our Governor, Mike Huckabee for both taking firm stands on small business being economic engine of America.

**MALE VOICE 1:** Any others who would like to comment at this time?

**MR. JOE SHEPARD:** I would quickly recognize [unintelligible] and I ask you to say something, and you put in [unintelligible], but I wanted to introduce you first. [Unintelligible] was appointed to the Regulatory Fairness Boards and one of the first appointees to the board in 1996, 1997, after it was formed [unintelligible] right until 2003. He's a native of West Memphis, Arkansas, a graduate of the University of Arkansas, [unintelligible] School of Architecture and is currently a partner in an architectural firm of [unintelligible] Security [phonetic]. He's also President of Purity [phonetic] and Company, which provides architectural instruction and social services. He advises other businesses and construction firms and contract management and administration issues as well as other matters involving business. He's a registered architect in Arkansas and Louisiana, and probably one of your most visible [unintelligible] is just behind this here [unintelligible] the [unintelligible] Presidential [unintelligible]. The city is very proud to have the states [unintelligible] that. We appreciate your help with that, and you've seen a lot of things while in the seven years [unintelligible] as well.

**MALE VOICE 4:** Thank you, Joe. It's great to be here today. Carol, how are you doing? Miss Hamilton, it's my first opportunity to meet you, and Linda, it's good seeing you today. I apologize for being late. I had about four meetings to do this morning, and this is my third, and I guess I'm not going to make the fourth, but I am happy to be here, and welcome to Arkansas. I didn't want to come. I saw the name up on the podium there. I didn't want to come up there, because I worked so late last night, I was afraid that I might fall over backwards and get injured, so I took a seat out here next to Jose and here I am. I enjoyed five years on the board, and I felt it was an educational process the entire time, as you go across the country and hear about some of the issues that small businesses face, and certainly some of those issues I'm affected by, also, being a small business, but I think just the opportunity to be heard, and I express the ideas and concepts that they may have to make government better is a good reward for being on the commission and on the board. I think that, as I served time on the board, I saw so many things that were done to improve government, and so it's a continuing process and certainly, the small businesses that were here today and they expressed themselves, I think that the follow up that they'll get from just being here today, I know Randy Hamlin here, and I know that he works hard in his business every day, and

certainly to have the opportunity to work for an agency that he once worked for and is now retired from, and want to go back and do other business. It's issues like those that really need to be addressed, and the first—the start of that is right here in this room, and certainly the help is here from all the government agencies that are here, and I would encourage everybody here to take advantage of all of the government expertise that's here today. Don't let them get out of here and go back to Washington without having the opportunity to talk with them. Even though they may not be from the agency that you may have a concern about, their agencies are similar to the other agencies, and they can certainly advise just as the young lady with the Corps of Engineers was mentioning. There are programs that are the same throughout the different agencies, so I think the job that you do is one that is really very important, and I just hope that people will continue to take advantage of it. I'm no longer on the board myself, so seeing alumni out there was telling me, 'well, you sit over here. It's you guys' time now,' and again, I'm glad to see you here. I hope that this process continues for on and on, and yes, Arkansas, I'm not sure where we're at in the process. I know that there was some conversation going on just as I was leaving the board, but I don't think that we have a small business regulatory board, but as a state, I know that Oklahoma was far ahead of us in trying to get something done, so maybe that's something that continues to need to be worked on, and whatever I can do to help with that process and work with you on it, Harold, I'd be happy to, but welcome. I think that this is a great day for Arkansas, having the hearing here, and I look forward to other opportunities that you guys will be back here. Thank you.

**FEMALE VOICE 1:** [Inaudible] federal agencies here. We are [unintelligible] very busy regulating with [unintelligible] day to day job of [unintelligible] right now. There are many issues facing all of our agencies, and I know that they are [unintelligible] representative OSHA here, the Council on the Army Corps of Engineers, someone from the Department of the Air Force [unintelligible], and if we could take a minute and ask those of you here representing federal [unintelligible] and [unintelligible] agency working for them yourself, and if you have any conversation you'd like to make, we'd really appreciate your stepping in during the conversations and [unintelligible] testimony [unintelligible], because that's the most [unintelligible] you lost, as well as the [unintelligible] here at the hearing. We thank you, really, very, very much, because as we talk to you, the hearing doesn't hurt your vital [unintelligible] and your [unintelligible] to make our government, so we thank you. [Unintelligible].

**MALE VOICE 5:** I'm not with any agency. I'm [unintelligible] retired consultant and operation [unintelligible], kind of the big picture guy. I guess I can make a few comments that might be read on.

[Crosstalk]

**MALE VOICE 5:** From the big picture point of view, not in [unintelligible] individual details [unintelligible]. If you look at the reports, I think you might [unintelligible] which come out annually, the [unintelligible] states is blessed with a singularly good civil service, and for the most parts, it's doing a good job. Those of you who [inaudible] the opportunity to get [inaudible], that's a non-security statement, because a lot of [unintelligible] truth. If you want to get through the regulatory process, it seems to be set up to give you two years [inaudible] to get an answer, but the regulations also have a second and third level affect, which were not talked about here at all. I'd invite you to at least consider when you look at the regulations. [Unintelligible] economist [inaudible] again for blacks. It's really not talking about the blacks; the publisher's talking about poor people, and as the burden of fulfilling the regulation's requirements, particularly in the licensing area, where you had the licensing to do things. It mostly doesn't apply to the [unintelligible] of government. It's such that if you don't have a lot of time and money, you can't do it, so you can't get started, and I certainly observed in talking to people in the small businesses [unintelligible] and they're complaining about some things, and say, "Well I can do this. I can get people to do it." One of the things I ask is could you have done it from the start of it? And they say, "No. [Unintelligible] just as they started." I couldn't have gotten [inaudible] start up requirements and things that [unintelligible] to do insurmountable problems that an individual, who's [unintelligible], "I think I'm going to build one house" [unintelligible] with somebody who's got [unintelligible] big houses going up, [unintelligible] poor people on to do something that's [inaudible]. Another somewhat related comment is what I call the third level effect, which would be very, very bad. For instance, one of the effects of people who [unintelligible] in the studies, for me, you will see a point of view is that a lot of companies will no longer start businesses in [unintelligible] neighborhoods, and that's a terrible statement to make. But what they find is, is they go into [unintelligible] neighborhood, they're hiring pool doesn't [inaudible], and they can't sort through and try and eventually go through the workforce. The workforce is there. The fact that historically, before some of the laws came out, it was considered [unintelligible] place to set up for business, because you could get good workers for a good salary, but you had to sort through several [unintelligible] to do that. That's now prohibited, because if you hire somebody, decide you don't work [unintelligible] and you're a minority, you face a real threat of a lawsuit, whether—

**FEMALE VOICE 1:** [interposing] I'm sorry, [inaudible]. I—

[Crosstalk]

**MALE VOICE 5:** —whether you're right or wrong, and so what

you find as you go out [unintelligible] a lot of [unintelligible] companies coming out. They [unintelligible] the whole regulatory issue by going some place where they don't have to confront those regulations. I can give you lots of other examples like that, but one of the things I invite you to think about when you think about regulations, is not only the effect of the regulation itself, but the side effects and [unintelligible] effects over the long term. Sometimes it's the regulation per se is good, the long term side effects is going to be terrible.

**FEMALE VOICE 1:** All right. Thank you. I'm sorry to interrupt, but we're running short of time. We do have one more person to testify. We will get back to the federal agencies, and given our need to improve this [unintelligible] at 12:00. [Unintelligible] arguments in here from federal agencies who represent [inaudible].

**MR. MAC McCALL:** Say that again? Thank you. Good afternoon. I thank you for letting me testify last. I have flown in from Austin, Texas to be with you all today. My name is Mac McCall. I'm the Regional and Political Manager for Associated Builders and Contractors. ABC is a national trade association overseeing 23,000 member firms in 79 chapters across the country. We have a chapter here in Little Rock with three councils around the state. I wanted to first read a couple of prepared statements we have. The first, talking about small business health plans, which I know is a priority issue for us and for you all's office as well, and then feel free to answer any of your questions, and then I'd like to discuss two regulatory issues with you as well. ABC is the construction industry's voice with legislative executive in the judicial branches of the federal government, with the state law governments as well as the news media. Listed among Fortune Magazine's Top 50 Most Influential Organizations, ABC is devoted exclusively to the advancement of the merit shop construction philosophy, which encourages open competition and a free enterprise approach that awards contracts based solely on merit, regardless of labor affiliation. ABC strongly supports prompt congressional passage of the Small Business Health Fairness Act of 2005. This vital legislation would allow small businesses to join together through bona fide associations to purchase healthcare coverage, providing participants economies of scale and increased bargaining power. That's BHP [phonetic] legislation was passed twice by the House of Representatives and the 108<sup>th</sup> Congress, both times by wide margins. This year, the House of Representatives has already passed HR525 and waiting for further action in the Senate, which is SB406. That bill, at the moment, is under a state of debate with two other companion pieces being considered for introduction. ABC continues to support SB406 introduced by Olympia Snowe, February 16, 2005. Just a few facts for you: According to the U.S. [unintelligible] Labor, nearly 85% of the nearly 45 million uninsured Americans are members of working



families, and 60% of those are employed or are a dependent of an employee of a small business. I'd like to just take a minute from that and read to you, I guess, give you a statement upon—as the history of AHP is, you can kind of know where we've come from and where we are now in regards to regulation of Association Health Plans. I guess, prior to last year, AHP, as they were before it became known as Small Business Health Plan, because people couldn't really figure it out, how small businesses could benefit if they weren't a part of an association. Now as the legislation stands currently, in order to receive their benefits, which we estimate to be between a 15 and 30% cost savings on health insurance premiums, you wouldn't have to be a member of one of thousands of bona fide trade associations around the country. Now, these associations can be anything from ABC, for example, to National Association of Beer Wholesalers, so they all have the ability to start and offer their own small business health plan regulated by the federal government. ABC first started in AHP in 1957 when five contractors got together because they were unable to purchase health insurance for their employees on their own. From 1957 until 1999, ABC enjoyed a distinguished history of providing health insurance and other welfare benefits to contracted members and their employers throughout the United States. The ABC/AHP operated in the full compliance with the ERISA as well as COBRA and then newly passed HIP Health Insurance [unintelligible] and accountability in 1996. Unfortunately, through state regulations, a patchwork of inconsistent state laws made it increasingly difficult to offer health insurance packages that [unintelligible] beneficial rates to our members and our employees. ERISA established the federal government as the primary regulator of private sector employee benefits as well as health insurance. AHPs currently exist under ERISA, the majority not falling under the umbrella of ERISA's preemption and are therefore severely hampered by an administrative burden and high cost of having to comply with 50 different sets of regulations, state benefit mandates as well as state fictitious group-wise. By 1997, ABC disbanded their AHP because our current provider said it was no longer cost effective for it to offer health insurance through our AHP. Currently, ABC advocates allowing markets to operate unencumbered by unnecessary state and federal government mandates. We believe an employer should be allowed to band together across state lines, thus increasing that purchasing power, improving access to coverage, and reducing overall costs. Bona fide trade associations like ABC traditionally have been successful in offering affordable health coverage, but that task has now become nearly impossible due to inconsistent and burdensome state mandated benefit laws. ABC strongly supports extending ERISA's preemption currently available for larger self-insurance corporate plans as well as the Taft-Hartley Act union plans to bona fide associations and professional societies for small business in the fully insured market through association health plans. Furthermore, ABC opposes ERISA

preemption waivers for states as they will most likely result in more inconsistent and costly state-imposed employer mandates, government price controls, higher taxes on workers' health plans, single payer systems, and increased healthcare costs. Without ERISA's nationally uniform standard, many of the most creative, innovative, and cost-effective employee-sponsored health benefit plans could not continue to operate because of the overwhelming costs of complying with overlapping, inconsistent, and incompatible state laws. Just to update you on sort of ABC is currently, ABC is the leader in the 254-member Small Business Health Plan Coalition in Washington, D.C. We are actively lobbying the Senate for, I guess, extended committee hearings. The Health Committee as well as the Small Business Committee have both had hearings on small business health plans this year. We're asking the [unintelligible] advocacy to join us in encouraging the Senate to take up this legislation. We want to have a floor vote—an up and down vote on this—much like you hear in the press of the Republicans demanding an up and down floor vote on judges; the Small Business Health Plan Coalition is demanding an up and down floor vote on this legislation. It is vitally important to us. Most of our member companies are at the point now of what they're calling us as sort of a 'upcoming day of reckoning,' when they will no longer be able to run their business efficiently, turn a profit, and offer health coverage to their employees and their employees' dependents. Many detractors of small business health plans say that we will only see a four or five year windfall in the lowering of premiums as the AHPs or SPHPs will become more competitive and premiums will rise. What we are advocating at the moment is any cost savings for any amount of time is worth the effort for us and our member companies, even a 12 month reduction in premiums would be a huge help to our member companies, as well as the members of these other companies in our Small Business Health Plan Coalition. With that said, if you have any questions about ABC's position on AHP, I'd love to answer them. If not, I'd like to discuss with you two issues with which I am, unfortunately, not an expert on, but would like, since you all are here, I would like to just discuss with you briefly about other challenges ABC members are facing in the OSHA reform and regulatory reform area. Before I continue, any questions on small business health plans? Thank you. Yes, sir?

**MR. JOE SHEPARD:** Mr. McCall, quickly. When you fill out a federal agency comment form on specifics of the ERISA rule and its interaction with the Texas State's agencies, I just—it [inaudible] about ABC's comments on that ERISA rule and its actions so that it can be really clear [unintelligible] to follow up on your [inaudible].

**MR. MAC McCALL:** Thank you. I appreciate it. Just quickly on ERISA, I mean, the dilemma we run into is we have 50 separate Blue Cross/Blue Shields, and they've operated very properly under

current health system, and any small business association health plan honestly will cut into their profit margin as companies who do operate with them for their small business—in quotes—health plan, you know, when you're offering health insurance to a group of 10 or 12 employees and maybe 30 or 40 dependents, they're going to see those probably [phonetic] go away as these people are able to buy health insurance at a 15 to 30% cost reduction, so, Mr., Shepard, speaking to ERISA, the major roadblock is really—are the Blues—and not that ABC wouldn't probably contract with a Blue Cross/Blue Shield to offer our own AHP, but with just a larger risk—a risk pool of a million employees, like the federal government or Microsoft or Wal-Mart, for example. You know, when your company only has a risk pool of maybe only 60 people, premiums are exponentially higher. And I apologize also for reading to you, and I wish that I could speak more candidly on OSHA reform, but ABC currently, as we've done it with AHPs before, has operated in partnership with OSHA to ease regulation on our member companies. I guess, sort of de facto or rumor has led us to believe that the current OSHA administration is operating on a quote base in terms of its regulatory enforcers being made to hand down a certain number of violations each year, and we operate under what's called a 'construction leader's agreement for safety or class partnership' with OSHA. That partnership is actually up for re-approval and we fear we may lose that partnership, because basically what the flat [phonetic] partnership does, OSHA will come in and inspect your business, and if you pass the partnership and you meet the standards that are by ABC and by OSHA, OSHA can't come onto one of your jobsites for a two-year period. Unfortunately, ABC members who aren't a part of flat [phonetic] partnership, or have had their partnership period end are then instantly inspected by the OSHA inspectors and are, most of the time, being found to have several minor violations. Violations, for example, as petty as outdated fire extinguishers on the job site—

**MALE VOICE 1:** [Unintelligible] contractor bids on that to—on that issue, I mean, obviously, OSHA's primary responsibilities [unintelligible] worker [unintelligible], fire [unintelligible] and if you missed the beginning of our conversation today about the specifics about our job, about onerous excessive regulations and oversight that they're almost to the point of not letting some of your members not be able to do their jobs, so on that specific comment, my recommendation would be, really just if there's instances with specific members, tell us what they are.

**MR. MAC McCALL:** Okay. We're getting to do that.

**MALE VOICE 1:** If the instance is something that happened and what we do is we can take those comments; we can visit with OSHA about it and you'll get a response back to you as a representative of ABC in order to [unintelligible] that small business that has a problem. It's real difficult when somebody in the [unintelligible] says

such-and-such and talking about quotas, and that's all great, but if we—the best way we can get back to you as [unintelligible] as the representative and to communicate effectively and answer back to ABC on the efforts from OSHA is to get very specific about incidences where, 'Here was something that happened, please address this. Tell me what this happened. Help me fix this,' and that's really the best approach [unintelligible].

**MR. MAC McCALL:** Okay. That's wonderful, and we will. I guess on that note, another thing that we are looking at is the reform of EAJA, the Equal Access to Justice Act. That law passed in 1980; was really union-friendly law, and it really, it's not—it does not favor the contractor who wants to challenge his OSHA violations in court. Currently, in most instances, when OSHA has come in and handed down citations, many merit shop contractors just pay the fine so that they can continue to do the work, get the projects finished on budget and on time. We push for reform of EAJA, and we—

**MALE VOICE 1:** [interposing] You know, I think instances like that are—this is a perfect environment where the law's been written, OSHA's doing its job, you disagree as a small business person, and so either that's where they [unintelligible] comment, a specific comment. And also once that comment's received, there's going to be days when OSHA, an interaction or a discussion is taking place. What ultimately happens is that that's the type of comment that get to communicate Congress [phonetic], and it's up to Congress to decide if they want to choose to revise that legislation. So basically, [unintelligible] help you to do something [unintelligible] we can do, so that's really the circular [phonetic] nature of the process, but we appreciate you being here, for bringing it up, because until—you really initiate that process with that comment.

**MR. MAC McCALL:** And we have, and with Charlie Norwood, the congressman from Georgia, this year introduced and passed four OSHA reform bills, one as a [unintelligible] reform bill. They passed the House; they're currently waiting to be taken up in the Senate, and your office's endorsement or advancement of those four bills, and they're packaged. They're just called the OSHA Reform Package. That's a major priority for us. The last thing I wanted to discuss with you was this general regulatory reform and, again, I apologize for reading our position, but I wanted to let you know where we are and where we're going, and actually, most of our information cited in this piece is from you all's office—the Office of Advocacy—I apologize. To begin, small business owners, those who create the vast majority of jobs in America, often face unfair and prohibitive regulations that impede their business' ability to compete. Overregulation negatively impacts the economy, often without achieving the intended benefits. For the construction industry, excessive regulation translates into higher costs that are eventually passed on to the consumer.

Overregulation on public sector contracts cost the federal government and taxpayers millions of dollars per year. Extreme regulation places an additional burden on the nation's economy by increasing the cost of doing business. Regulations are estimated to cost approximately \$754 billion in 1998. In fact, a study completed by the Center for the Study of American Business found that in 2001, federal regulatory agencies will have budgets totaling \$19.1 billion and will employ 132,000 people. The Small Business Administration's Office of Advocacy released a study that states that small businesses spend almost \$7,000 per employee each year to comply with federal regulations. In fact, the study concludes that complying with federal regulations costs small businesses 60% more than it would a company employing 500 employees or more. The small business community is disproportionately affected by these burdensome federal regulations. A majority of ABC's members are small businesses, many of which are often overburdened by regulatory mandates that appear to have little benefit in ensuring a safe and healthy work site. The construction industry is one of the most highly regulated industries in our economy. Regulatory reform efforts are most often forwarded by claims from the environmental community that's scaling back regulations will result in harming the health and safety of the nation by getting programs and protections. In reality, efforts to reform government regulation are designed to ensure that public and private resources are spent more effectively and efficiently to achieve a cleaner, safer, and healthier environment. ABC strongly believes that unnecessary burdensome and costly regulations result in the efforts of Washington bureaucrats of little accountability for their actions. Enforcement of our nation's goals works best when it's performed at the local level and provide necessary flexibility. Costs involved in policing the regulatory state brought the total burden of regulations to \$754 billion in 1998. The government should be forced to conduct an accurate assessment of the costs and benefits of proposed regulations on the public and be held accountable through congressional scrutiny. This will better allocate limited resources and target efforts towards achieving the nation's environmental health and safety goals. Regulations should be reviewed periodically to ensure that they are not outdated, unnecessary, or too costly. It is common sense that American citizens should not be forced to live by burdensome or inappropriate rules that are not just provided [phonetic] for current times. ABC strongly supports comprehensive regulatory reform, including across the board requirements for agencies to evaluate the risks, weigh the costs, and assess the benefits of regulations.

**MALE VOICE 1:** Mr. McCall, you have about 30 more seconds. We have to get wrapped up.

**MR. MAC McCALL:** No problem. ABC also supports target regulatory relief proposals, such as improving public accountability of

regulators, improving scientific review of the regulatory process requiring a period review of regulations to eliminate unnecessary rules, rigorous economic analysis of the costs and regulations and improving private property rights legislation guarantying compensation for loss of land due to government actions. To advance these goals, ABC fully supports full funding for the SBA Office of Advocacy.

**MALE VOICE 1:** Let me just to conclude. I appreciate you coming in from Austin very much.

**MR. MAC McCALL:** And I'm glad to be here.

**MALE VOICE 1:** Sorry you were late. I know that you are, too, but better late than never. I would, just to [unintelligible] advocacy puts out some great studies of the small businesses spend on average 60% of big business for each [unintelligible] \$7,000 per [unintelligible] burden. I would encourage your members, and always be in constant contact with [unintelligible] Office of Advocacy. Let them be aware of, and to the work [unintelligible] legislation before it's passed at the U.S. Congress level. [Unintelligible]. My recommendation to you is to always be in constant contact with the Office of Advocacy and encourage your members to do that.

**MR. MAC McCALL:** Yes, sir.

**MALE VOICE 1:** Let's—I want—Regina had to go and I know many of you have to go, and we wanted very quickly, [unintelligible], you were going to [unintelligible] for flipping, but if you could, if those of you who you recognize [unintelligible]. If you could just say hello and identify yourself and your agency, and any opinions you want to share with this group of people [unintelligible].

**MR. JOHN MILES:** I'm John Miles; I'm the [unintelligible] Administrator of OSHA, and [unintelligible]. I'd just like make one comment about OSHA. Some of those were not true, because we [unintelligible] program [unintelligible].

**MALE VOICE 1:** I understand.

**MR. JOHN MILES:** And the partnership we have, a great partnership with [unintelligible]. In this region, I have 43 partnerships; about ten of them with ABC.

**MALE VOICE 1:** Excellent. Thank you very much.

**MR. ERIC THOMPSON:** Eric Thompson. I represent the [inaudible] for the United States Department of Agriculture.

**MALE VOICE 1:** It's very good to see you.

**MALE VOICE 3:** I'd like to go ahead if you could just put [unintelligible] it would be good for the Department of Labor [unintelligible].

**FEMALE VOICE 1:** [Inaudible] Department of Labor and we offer a small business program.

**MALE VOICE 1:** Okay.

**MALE VOICE 6:** I'm [inaudible], and I'm the District Director for the U.S. Department of [inaudible] in our division.

**MALE VOICE 1:** Well, I refer to all of you, if you haven't seen the [unintelligible] and we'll report to Congress. It is an interesting document. It'll [unintelligible] your agency and you can see how you do from year to year, so it's an important document. I guess, as we wrap up here, I'd like to just make sure, Jose and I here, will be around to visit and [unintelligible]. Be sure and get your comment forms in to us, back up notes, so that we can be prompt in our follow up. Don't hesitate to contact us about anything. You have our contact information. We're here to get you an answer, and, you know, communicate your concerns to Congress, and this is, again, very appreciative of everyone's time today. Thank you for being here, and are we dismissed, sir? Very good. Thank you very much.

**MALE VOICE 2:** Thank you, everyone.

[END TAPE Z0000001]